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In the Supreme Court of the United States

OCTOBER TERM, 1978

GEORGE JOSEPH SANTONI, PETITIONER

v.

UNITED STATES OF AMERICA

JOHN JAKE KONSTANTINE JAKUBIK, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A16)[1] is reported at 585 F.2d 667.

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[1] "Pet. App." refers to the appendix to the petition in No. 78-843.

JURISDICTION

The judgment of the court of appeals was entered on October 19, 1978. A petition for rehearing filed by petitioner Jakubik was denied on November 15, 1978. The petition for a writ of certiorari in No. 78-843 was filed on November 20, 1978, and is therefore out of time under Rule 22(2) of the Rules of this Court. The petition for a writ of certiorari in No. 78-944 was filed on December 12, 1978. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether, in the circumstances of this case, there was a sufficient nexus with interstate commerce to support a conviction under the Hobbs Act, 18 U.S.C. 1951 (petitioner Santoni).

2. Whether "property" was extorted within the meaning of the Hobbs Act, 18 U.S.C. 1951 (petitioner Jakubik).

STATEMENT

Following a jury trial in the United States District Court for the District of Maryland, petitioner Santoni was convicted on four counts (counts 1-4) and petitioner Jakubik on one count (count 2) of obstruction of interstate commerce by means of extortion, in violation of 18 U.S.C. 1951 (the Hobbs Act) and 2.[2] Petitioner Santoni was sentenced to

[2] Petitioner Santoni was acquitted by the jury of income tax evasion (count 5); petitioner Jakubik was acquitted by the jury on one count of extortion (count 3).

concurrent terms of five years' imprisonment on each count; petitioner Jakubik was sentenced to 18 months' imprisonment. The court of appeals affirmed (Pet. App. A1-A16).

The evidence at trial is set forth in the opinion of the court of appeals (Pet. App. A2-A6). It showed that in order to obtain proof of political kickbacks and extortion in local government contracts in Baltimore, Maryland, the FBI organized the Municipal Chemical Corporation in February 1975, ostensibly to perform contracts for chemical cleaning and building demolition. Two FBI agents acted as officers of the corporation and Salvatore Spinnato, a chemical cleaning specialist, was hired as a consultant. In May 1975, Olympos Painting Company entered into a contract with the City of Baltimore to clean two public schools. Spinnato approached petitioner Santoni, who was a member of the Maryland House of Delegates, and explained that Municipal Chemical had bid unsuccessfully for that contract. Petitioner Santoni advised Spinnatto that for $3,000 plus 10% of all contract fees, he could obtain a subcontract for Municipal Chemical from Olympos.

Petitioner Jakubik, a building maintenance foreman for the City of Baltimore, arranged meetings between petitioner Santoni and Konstantinos Nicolaidis, president of Olympos. At two meetings petitioner Santoni asked Nicolaidis to give a subcontract to Municipal Chemical and suggested that if he complied he would have no trouble with inspectors. Petitioner Jakubik also told Nicolaidis that petitioner

Santoni knew people who could "help contractors, that it's good to have these people as friends, and sometimes you couldn't afford to have them against you" (Pet. App. A5). Nicolaidis then agreed to award the subcontract to Municipal Chemical for $16,000, and Municipal Chemical in turn gave petitioner Santoni a 10% kickback of $1,600. Municipal Chemical also paid petitioner Santoni $10,000 to secure his aid in requiring demolition contracts.

In performing the cleaning operation, Municipal Chemical used Hydron 300, a chemical manufactured in Pennsylvania that was expressly required by the original contract. Municipal Chemical purchased part of the Hydron 300 in Pennsylvania, and also rented scaffolding from a California company to perform the contract.

ARGUMENT

1. Petitioner Santoni contends (Pet. 9-24) that the connection with interstate commerce in this case was provided solely by the activities of the FBI and is hence insufficient to establish jurisdiction under the Hobbs Act. This claim is incorrect.

As petitioner acknowledges (Pet. 9-11), Section 1951 requires only a minimal connection with interstate commerce. "[A]ll that is required to bring an extortion within the statute is proof of a reasonably probable effect on commerce, however minimal, as a result of the extortion." *United States* v. *Spagnolo*, 546 F.2d 1117, 1119 (4th Cir. 1976), cert. denied, 433 U.S. 909 (1977). Here the proof showed that

the extortion was directed at and affected a company that used a chemical that was purchased in Pennsylvania and scaffolding that was rented from a firm in California.

Although petitioner does not dispute that the proof of a nexus with interstate commerce that was offered at trial ordinarily would satisfy the requirements of Section 1951, he argues (Pet. 14-24), relying primarily on *United States* v. *Archer*, 486 F.2d 670 (2d Cir. 1973), that the requirements of the statute are not satisfied when the interstate nexus is "provided by the Government" (Pet. 14). The court of appeals correctly held (Pet. App. A7-A8), however, that *Archer* is inapposite to the circumstances of this case. In that case, the court of appeals reversed a conviction under the Travel Act, 18 U.S.C. 1952 (use of interstate facilities in the commission of certain unlawful acts) because the only proven connection with interstate commerce consisted of interstate telephone calls initiated by government agents solely for the purpose of obtaining federal jurisdiction. Here, in contrast, the chemical used by Municipal Chemical was manufactured and purchased in Pennsylvania and was expressly required by the original city contract. The FBI had no role in establishing that requirement. As the court of appeals stated (Pet. App. A8), "[r]egardless of who performed the work on the two Baltimore schools, interstate commerce would have been involved in the cleaning process by this required use of Hydron 300."

The decision below is further supported by the fact that after *Archer* the Second Circuit upheld a conviction under Section 1951 on facts quite similar to this case. *United States* v. *Gambino*, 566 F.2d 414 (2d. Cir. 1977), cert. denied, 435 U.S. 952 (1978). As the court below explained (Pet. App. A7-A8):

> In *Gambino* the FBI had organized a sanitation collection company in an effort to uncover extortionate pressure being placed on similar companies by the defendants. The only connection with interstate commerce was the government's out-of-state purchases of equipment, and dumping of garbage in New Jersey because of cheaper rates. The court distinguished *Archer* by noting that it involved the contrived use of interstate facilities whereas in *Gambino* "the activities of [the government corporation] were *necessarily* wedded to interstate commerce." 566 F.2d at 419 (emphasis added). In our opinion the present case is distinguishable from *Archer* and falls within the rationale of *Gambino* since the contract with the city *required* the use of Hydron 300.[3]

2. Petitioner Jakubik contends (Pet. 6-10) that no "property" was extorted within the meaning of

[3] Petitioner's further reliance (Pet. 21-22) on *United States* v. *Yokley*, 542 F.2d 300 (6th Cir. 1976), and *United States* v. *Culbert*, 548 F.2d 1355 (9th Cir. 1977), overlooks the fact—noted by the court below (Pet. App. A8-A9)—that this Court reversed the decision in *Culbert*, 435 U.S. 371 (1978), and expressly rejected the reasoning of *Yokley* (*id.* at 372 & n.2).

18 U.S.C. 1951 because Municipal Chemical rendered valuable services to Olympos and, accordingly, Olympos suffered no loss.

Petitioner's claim is based on a misinterpretation of the Hobbs Act. Section 1951(b)(2) defines extortion as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right." It is well established that "property" under this Section includes intangible as well as tangible property (*United States* v. *Nadaline*, 471 F.2d 340, 344 (5th Cir.), cert. denied, 411 U.S. 951 (1973)), and the court of appeals correctly held (Pet. App. A11) that the "right * * * to make a business decision free from outside pressure wrongfully imposed" is a property right within meaning of Section 1951. See also *United States* v. *Tropiano*, 418 F.2d 1069, 1075-1076 (2d Cir. 1969), cert. denied, 397 U.S. 1021 (1970)). In this case petitioners, by wrongful threats and promises, forced Olympos to award a subcontract to Municipal Chemical and thereby to surrender its right to select its own subcontractor and make its own business decisions. Whether petitioners could prove that Olympos was financially better off for having yielded to their extortionate demands is immaterial.[4]

[4] *United States* v. *Enmons*, 410 U.S. 396 (1973), relied on by petitioner Jakubik (Pet. 9), merely holds that there is no "wrongful" taking under the Hobbs Act when a union acts to secure wages *legitimately* due to workers. In this case, the contract did not legitimately belong to Municipal Chemical and petitioners' taking it from Olympos was clearly wrongful.

CONCLUSION

The petitions for a writ of certiorari should be denied.

Respectfully submitted.

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